

JUDGE MARY A. MCLAUGHLIN  
PRELIMINARY GENERAL MATTERS AS OF JULY 16, 2003

1. Correspondence with the Court.

Counsel may write to Judge McLaughlin to request an extension of time and for all matters pertaining to scheduling. Judge McLaughlin does not permit correspondence in lieu of formal discovery or contested motions or other substantive matters which should be made of record.

2. Communications with Law Clerks.

Judge McLaughlin permits counsel to speak with her law clerks about administrative or scheduling matters.

3. Telephone Conferences.

Judge McLaughlin will use telephone conferences for scheduling changes, extensions of time, and similar matters. She often has conference calls on discovery motions. Judge McLaughlin requests that counsel or a conference call operator place the call.

4. Oral Arguments and Evidentiary Hearings.

Judge McLaughlin does not set aside specific days or times for oral arguments or evidentiary hearings. Arguments and hearings are scheduled on an ad hoc basis.

5. Pro Hac Vice Admissions.

Judge McLaughlin expects motions for pro hac vice admissions to be in writing. She requires the attorney seeking such admission to submit a signed affidavit or certification stating that he or she is a member in good standing of the bar of another state.

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences.

After the entry of appearance by defense counsel in civil actions, Judge McLaughlin schedules a Rule 16 conference in chambers, or on the telephone depending on the location of counsel. If any counsel is located outside Philadelphia, the Rule 16 Conference will be on the telephone. At this status conference, counsel are expected to be prepared to discuss jurisdictional defects; possibility of amicable settlement; alternative dispute resolution; time limitations for joining additional parties and amending pleadings, if necessary; scheduling for discovery deadlines, filing of motions, filing of pretrial memoranda, and future pretrial conferences; scheduling a date for trial; and any other appropriate matter. Judge McLaughlin enters a scheduling order following this conference.

Prior to attending this conference, parties are expected to have conferred with each other about each of these items, including discussion of settlement.

### Continuances and Extensions

#### 1. General Policy.

Since trial dates are set well in advance, normally at the time of the initial conference, Judge McLaughlin is extremely reluctant to grant continuances - especially if the attorneys have not been diligent in moving the case forward. The Court will not accept accommodations counsel may extend to each other during the discovery period as a reason to extend the discovery deadline or the trial date.

Judge McLaughlin will permit extension of discovery deadlines only upon showing of good cause.

### General Motion Practice

Except as set forth herein, motion practice will be conducted in accordance with Local Civil Rule 7.1.

The originals of all motions and briefs shall be filed with the Clerk. A copy of same shall be delivered to Judge McLaughlin's chambers.

A reply brief, addressing arguments raised in the brief in opposition to the motion, may be filed and served by the moving

party within seven (7) days after service of the brief in opposition to the motion unless the Court sets a different schedule. However, the Court will not necessarily delay its decision while awaiting a reply brief.

No further briefs may be filed, and no extension of time will be granted without leave of Court for good cause shown.

Except with leave of Court for good cause shown, no reply brief shall exceed fifteen (15) pages. Every factual assertion in a brief shall be supported by a citation to the record where that fact may be found. Both legal citations and citations to the record shall include pinpoint cites.

Judge McLaughlin will hear oral argument on motions, if she believes it will assist her in deciding the motion. Counsel may request to be heard on a motion and this request will be considered.

#### Discovery Matters

##### 1. Length of Discovery Period and Extensions.

The length of time permitted for discovery depends upon the nature of each case. Judge McLaughlin generally permits up to six months of discovery, except for more complex litigation.

## 2. Discovery Disputes.

When a discovery dispute arises, counsel are strongly urged to settle it among themselves. However, if after making a good faith effort, counsel are unable to resolve a disputed issue, counsel for the aggrieved party shall file with the Court a motion in conformity with Local Civil Rule 26.1(b), with a form of order, and short brief not to exceed five (5) pages describing the disputed issue(s). The Court will normally schedule a telephone conference with counsel to discuss the motion before the filing of any responsive brief. In most cases, the Court expects to rule promptly on discovery motions and often decides such motions during the telephone conference. All motions must contain the certification required under Local Civil Rule 26.1(f).

## 3. Confidentiality Agreements.

Judge McLaughlin will approve a confidentiality order if the order includes a detailed statement demonstrating that good cause exists for the protective order. See Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994). All such orders must contain the following language or language substantially similar:

The court retains the right to allow disclosure of any subject covered by this stipulation or to modify this stipulation at any time in the interest of justice.

#### 4. Expert Witnesses.

Parties should identify expert witnesses and provide the experts' written reports pursuant to the scheduling order entered in the particular case. Failure to do so may bar the use of the expert's testimony at trial.

#### Settlement

Judge McLaughlin usually will refer settlement conferences to a magistrate judge.

#### Arbitration

In arbitration cases, Judge McLaughlin normally does not schedule a status conference or settlement conference unless requested by counsel to do so. Appeals from arbitration are scheduled for trial promptly.

#### Summary Judgment Motions

All summary judgment motions and oppositions to such motions must contain a recitation of facts with citation to the record. The Court will not consider any description of a fact that is not supported by a citation to the record. A party opposing summary judgment must state whether it agrees or disagrees that the facts as stated by the moving party are undisputed. If a party

contends that a fact is in dispute, it must cite to the record evidence that supports the party's view of that particular fact.

#### Proposed Final Pretrial Memoranda

Unless otherwise specified, Judge McLaughlin requires the parties to submit short pretrial memoranda pursuant to Local Rule 16.1(c). Judge McLaughlin requires the submission of voir dire questions, proposed jury instructions, proposed verdict sheets, and motions in limine. In non-jury cases, she requires submission of proposed findings of fact and conclusions of law.

In preparation for a final pretrial conference, Judge McLaughlin expects counsel to communicate with each other on a number of matters, including objections to exhibits, expert depositions, and stipulations of fact.

#### Injunctions

##### 1. Scheduling and Expedited Discovery.

When a temporary restraining order is requested, Judge McLaughlin will immediately schedule a conference as soon as possible to decide the TRO. She requires all counsel to be present unless the urgency of the circumstances precludes notice to opposing counsel. Judge McLaughlin rarely grants ex parte temporary restraining orders.

Judge McLaughlin schedules preliminary and permanent injunction hearings as soon as possible and combines the two hearings if feasible. Usually, she permits expedited discovery for injunctive matters.

2. Proposed Findings of Fact and Conclusions of Law.

Judge McLaughlin requires the submission of findings of fact and conclusions of law in injunction cases, in accordance with Fed R. Civ. P. 52(a).

Trial Procedure

1. Scheduling of Cases.

Each case on Judge McLaughlin's calendar is assigned a specific trial date. The Court may start as early as 9:00 a.m. and may sit until 5:00 p.m. or later.

2. Conflicts of Counsel.

When counsel become aware of professional or personal conflicts that may affect the trial schedule, they should notify Judge McLaughlin and opposing counsel immediately.



3. Cases Involving Out-of-Town Parties or Witnesses.

Judge McLaughlin has no special policy for cases involving out-of-town attorneys, parties, or witnesses.

4. Notetaking by Jurors.

Judge McLaughlin decides whether notetaking will be permitted on a case by case basis.

5. Trial Briefs.

Judge McLaughlin encourages the submission of trial briefs when they are necessary or likely to be helpful to the Court.

6. Voir Dire.

Judge McLaughlin's usual practice in civil matters is to conduct the voir dire.

7. Side Bars.

Judge McLaughlin holds side-bar conferences when necessary.

8. In Limine Motions.

Judge McLaughlin normally hears any necessary in limine motions immediately prior to trial or during trial unless an earlier ruling will assist settlement discussions or the trial of the case. She prefers such motions to be in writing and filed sufficiently in advance of trial so that she can consider the motion and make an appropriate ruling.

9. Examination of Witnesses Out of Sequence.

Judge McLaughlin is willing to take witnesses out of turn for their convenience, particularly when there is no objection by opposing counsel.

10. Opening Statements and Summations.

Judge McLaughlin is flexible with regard to time limits on openings statements and summations. She usually will discuss the time needed with counsel prior to the speeches.

11. Examination of Witnesses or Argument  
by More Than One Attorney.

Judge McLaughlin will not permit more than one attorney for a party to examine the same witness.

12. Examination of Witnesses Beyond Redirect and Recross

Judge McLaughlin does not have any general policy concerning examination beyond redirect and recross.

13. Videotaped Testimony.

Judge McLaughlin requires counsel to view all videotaped depositions for the purpose of editing the videotape and resolving material objections before offering the videotape as evidence.

14. Reading of Material Into the Record.

Judge McLaughlin has no special practice on reading stipulations, pleadings, or discovery materials into the record.

15. Preparation of Exhibits.

Before commencement of trial, exhibits are to be premarked and exchanged by counsel. Counsel should provide Judge McLaughlin with two (2) copies of each exhibit and a schedule of exhibits which shall briefly describe each exhibit.

16. Offering Exhibits into Evidence.

Judge McLaughlin has no general policy as to when exhibits should be offered into evidence. When the number of exhibits in a case is large, Judge McLaughlin prefers counsel to

reach advance agreement as to the admission of as many exhibits as possible.

17. Directed Verdict Motions.

Judge McLaughlin hears directed verdict motions outside the hearing of the jury.

18. Proposed Jury Instructions and Verdict Forms.

Judge McLaughlin's usual practice is that at least five (5) working days before the case is listed for trial, each party shall submit to the Court, and serve on each other, two (2) copies of proposed points for charge and any proposed special jury interrogatories. Each point for charge and proposed jury interrogatory shall be numbered and on a separate sheet of paper identifying the name of the requesting party. Supplemental points for charge will be permitted during and at the conclusion of the trial. Points for charge should be accompanied by appropriate citations of legal authority.

19. Proposed Findings of Fact and Conclusions of Law.

Judge McLaughlin may require the submission of proposed findings of fact and conclusions of law in non-jury cases.

20. Decisions in Non-jury Cases.

Counsel should be prepared for oral argument immediately following the close of all the evidence in a non-jury trial.

Jury Deliberations

1. Written Jury Instructions.

Judge McLaughlin provides counsel with a copy of proposed jury instructions for review in advance of a charge conference. Judge McLaughlin permits counsel to put objections to the charge on the record before the jury retires. Judge McLaughlin usually gives the jury a copy of her instructions.

2. Exhibits in the Jury Room.

Counsel are instructed to confer on which exhibits should go into the jury room. Judge McLaughlin will rule upon any dispute.

3. Availability of Counsel During Jury Deliberations.

Judge McLaughlin prefers counsel to remain in the courthouse during jury deliberations. Counsel should be available in case questions arise from the jury during its deliberation.

4. Taking the Verdict and Special Interrogatories.

In most civil cases, Judge McLaughlin submits written interrogatories to the jury. A copy of such interrogatories is given to each juror.

5. Polling the Jury.

If there is a request to poll the jury, the Court will poll the jury.

6. Interviewing the Jury.

Judge McLaughlin permits counsel to interview the jurors after the verdict has been recorded and the jury has been discharged. However, jurors are told they are under no obligation to speak with counsel.

CRIMINAL CASES

1. Approach to Oral Argument and Motions.

Judge McLaughlin will grant oral argument on motions in criminal cases if she believes it will assist her in deciding the motions. Hearings on motions to suppress evidence and Starks hearings will usually be held in advance of trial.

2. Pretrial Conferences.

Judge McLaughlin holds pretrial conferences in criminal cases as needed.

3. Voir Dire.

Judge McLaughlin conducts the voir dire in criminal cases, and she encourages counsel to submit proposed voir dire questions.

4. Proposed Jury Instructions and Verdict Forms.

Judge McLaughlin requires that at least five (5) working days before the date the case is set for trial, each party shall submit to the court and serve on each other, two (2) copies of proposed points for charge and a proposed verdict form. Each point for charge shall be numbered and on a separate sheet of paper identifying the name of the requesting party. Supplemental points for charge will be permitted during and at the conclusion of the trial. Points for charge should be accompanied by appropriate citations of legal authority.

5. Guilty Plea Memoranda.

Judge McLaughlin requires the government to submit a guilty plea memorandum two days prior to the guilty plea. Such a

memorandum shall include the elements of each offense to which the defendant is pleading guilty and legal citations for such elements.

6. Sentencing Memoranda.

Judge McLaughlin encourages the submission of sentencing memoranda by both the government and the defendant.

OTHER GENERAL MATTERS

1. Judge McLaughlin expects counsel to be punctual for all conferences, hearings, and trials. She also expects counsel at all times to be civil to one another as well as to all parties, witnesses, and court personnel.

2. In all courtroom proceedings, Judge McLaughlin expects counsel to stand when addressing the Court or when examining witnesses. Counsel also may approach the witnesses with permission of the Court.

3. In general, Judge McLaughlin expects counsel to bring matters to her attention only after they have been discussed with opposing counsel.



### Judge McLaughlin's Courtroom Procedures

1. Counsel should stand whenever speaking, that is, counsel should stand when addressing the Court, the jury, or the witness.

2. Counsel may stand anywhere he or she chooses when questioning the witness or talking to the jury, except that counsel should not crowd the witness or the jury.

3. If counsel wishes to approach the witness, counsel should ask for permission to do so. "Your Honor, may I approach the witness." If counsel needs to approach one witness many times, I will at some point tell the lawyer that the lawyer need not continue to ask. When counsel approaches the witness, he or she should accomplish the reason for approaching and then return to the place from which he or she is questioning.

4. If counsel wishes to make an objection, he or she should stand and say objection, Your Honor. Counsel may give the basis for the objection in a word or phrase, like "hearsay." Counsel may not make a speech. If counsel wishes to have a sidebar, the Court will usually grant the request if counsel does not ask for too many sidebars. Counsel is encouraged to bring any

evidentiary questions to the attention of the Court outside the presence of the jury.

5. All counsel, but especially prosecutors, are reminded that redirect is still direct examination, and not cross.

6. Counsel has the responsibility to advise their witnesses that no witness, especially government witnesses in a criminal case, should talk to the jury at any time. For example, if the witness has stepped down from the witness stand to testify from an exhibit, the witness should not have any private conversation whatsoever with any juror. The witness may, of course, direct his or her answers to the jury's direction but the witness is still answering the lawyer's questions.

7. In opening or closing statements, no lawyer, especially criminal prosecutors, may call a witness, especially a criminal defendant, a "liar" or say that the witness "lied." Such conclusions are for the jury to make. Using such language is giving your opinion and inflammatory. Similarly, lawyers are not to give their own opinions during opening or closing statements. For example, you should not say "I believe," or "I think."

8. I will always have a clerk in the courtroom during a jury trial who will give the jurors any exhibits or other items that counsel requests be given to them. Counsel should not walk up to the jury and start handing them things out. Nor should counsel ask the jurors if they can see or hear something. If counsel is concerned, he or she should say something like: "Your Honor, Would the Court ask if the jury can see or hear."

9. I consider a jury trial a very formal affair and ask all counsel to act accordingly. Coats, coffee cups, water bottles should not be left within sight of the jury. Boxes of exhibits or brief cases should not be on counsel table.

10. Opposing counsel should never talk to each other in front of the jury, without the Court's permission. The Court will allow counsel to have a private conversation if requested and if it will move things along. Lawyers should never talk to each other in front of the jury. Lawyers absolutely should not argue with either opposing counsel or the Court.

### Judge McLaughlin's Procedures for Voir Dire in a Civil Case

The Court will conduct the voir dire with input from counsel for the plaintiff and the defendant. The panel of approximately 25-40 prospective jurors will enter the courtroom and sit according to the number that appears next to their names on the print out from the jury office. This number is different from their "juror number." They will sit according to their order number - the number that reflects the order in which they were selected downstairs in the jury room. The order numbers are 1 to 25-40. They will then be asked to give their order number as they stand to respond to questions. This will allow the lawyers to keep track more easily of the prospective jurors' responses.

The Court will explain the purpose of voir dire and then begin questioning. The Court will ask questions in a way that calls for panel members to raise their hand only if their answer to the question is yes. For example, "is there anyone who for any reason thinks that they could not be fair and impartial if he or she sat as a juror in this case." I will tell the panel that if the answer to this question is yes, they should raise their hand and, when called on, state their juror number and nothing else. I will then follow-up privately with that panel member.

With some questions, I will follow-up on the prospective juror's answer in open court. For example, "is there anyone who has had any legal training." If a panel member raises his or hand to say yes, I will follow-up with questions about the prior legal training.

After asking the questions to the full panel, the Court will go to sidebar with counsel for follow-up as necessary. The Court will ask the questions but will ask the lawyers if they would like the Court to do any follow-up. The lawyers will not talk directly to the panel member. If any party wants to request a strike for cause, he or she should do so right after the panel member leaves the sidebar, rather than waiting until all the panel members have been questioned.

After any individual questioning is complete, the peremptory challenges begin. A panel of 14 is needed for 8 jurors. The deputy clerk will give to plaintiff's counsel the list of jurors from which the peremptory challenges will be taken. Plaintiff takes the first strike and will pass the list to defense counsel until both parties have taken their 3 peremptory challenges.

The jurors selected will then be called to the jury box by the deputy clerk. After they are all seated, the Court will ask counsel if the jurors in the box are the ones they selected, meaning only did the deputy clerk call the correct jurors into the box. Any previous objections that have been made to any decisions by the Court will be preserved.

#### Judge McLaughlin's Procedures for Voir Dire in a Criminal Case

The Court will conduct the voir dire with input from counsel for the government and the defendant. The panel of approximately 50-60 prospective jurors will enter the courtroom and sit according to the number that appears next to their names on the print out from the jury office. This number is different from their "juror number." They will sit according to their order number - the number that reflects the order in which they were selected downstairs in the jury room. The order numbers are 1 to 50-60. They will then be asked to give their order number as they stand to respond to questions. This will allow the lawyers to keep track more easily of the prospective jurors' responses.

The Court will explain the purpose of voir dire and then begin questioning. The Court will ask questions in a way that calls for panel members to raise their hand only if their answer to

the question is yes. For example, "is there anyone who for any reason thinks that they could not be fair and impartial if he or she sat as a juror in this case." I will tell the panel that if the answer to this question is yes, they should raise their hand and, when called on, state their juror number and nothing else. I will then follow-up privately with that panel member.

With some questions, I will follow-up on the prospective juror's answer in open court. For example, "is there anyone who is, or has ever been, or has a close friend or family member, who is a member of any law enforcement agency." If a panel member raises his or hand to say yes, I will follow-up with questions about the relationship and what law enforcement agency is involved.

After asking the questions to the full panel, the Court will go into the jury room with the parties and counsel for follow-up as necessary. In the jury room, the Court will ask the questions but will ask the lawyers if they would like the Court to do any follow-up. The lawyers will not talk directly to the panel member. If any party wants to request a strike for cause, he or she should do so right after the panel member leaves the jury room, rather than waiting until all the panel members have been questioned.

Under Fed. R. Crim Pro. 24(b), the government gets 6 peremptory challenges in a felony case and the defendant gets 10. If we seat two alternates, as I usually do, each side gets 1 additional peremptory (Rule 24(c)(4)).

After any individual questioning is complete, the peremptory challenges begin. A panel of 32 is needed for 12 jurors and two alternates. The deputy clerk will give to the prosecutor the list of jurors from which the peremptory challenges for the first 12 will be taken. The order of taking the challenges is as follows:

| Government | Defendant |
|------------|-----------|
| 1          | 2         |
| 1          | 2         |
| 1          | 2         |
| 1          | 2         |
| 1          | 2         |
| 1          |           |

The government gets the first and last strike.



Counsel will then take the peremptory challenge(s) for the alternates. If there are two alternates, and therefore one peremptory for each side, the defendant takes the first strike and then the government.

The jurors selected will then be called to the jury box by the deputy clerk. After they are all seated, the Court will ask counsel if the jurors in the box are the ones they selected, meaning only did the deputy clerk call the correct jurors into the box. Any previous objections that have been made to any decisions by the Court will be preserved.